

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SECOND APPEAL No 121 of 1984

For Approval and Signature:

Hon'ble MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

MAFATBHAI M VALAND, HEIR OF DECEASED MOHANBHAI I VALAND

Versus

DAUDBHAI ISABHAI

Appearance:

MR JITENDRA M PATEL for Petitioners

MR SC DESAI for Respondent No. 1

CORAM : MR.JUSTICE J.R.VORA

Date of decision: 17/11/2000

ORAL JUDGEMENT

1. Being aggrieved by the judgment and order of Third Extra Assistant Judge at Vadodara in Civil Appeal No. 119 of 1984, confirming the decree passed in favour of the plaintiff in Civil Suit No. 1051 of 1979 of the Court of Civil Judge (JD), Baroda, this Second Appeal is

filed by original defendants.

2. As per the brief facts, respondent herein entered into a contract on 2nd June, 1969 with Mohanbhai Icchabhai Valand, whose legal heirs are appellants herein, by which deceased Mohanbhai had taken an amount of Rs. 7,000/- from the present respondent - original defendant and in lieu thereof their agricultural lands bearing Survey No. 157 admeasuring 4 acres and 5 gunthas was entrusted to plaintiff Daudbhai Isabhai, respondent herein, for cultivation and for utilisation of the agriculture produce. It was agreed by a special covenant in the agreement that the possession of said agricultural land will be restored to present appellant i.e. to Mohanbhai when the amount of Rs. 7,000/- are returned to plaintiff respondent herein. Thereafter, Mohanbhai took some more amount, in pursuance of the above said agreement, endorsement of which was made below the said agreement. The last amount which was borrowed by Mohanbhai was on 28th of March, 1973 and the total amount then comes to Rs. 8,165. It appears that after some time, the exact period has not be stated by either of the parties, the possession was taken away by Mohanbhai from plaintiff respondent Daudbhai Isabhai and according to the case of the plaintiff as per covenant, money borrowed by Mohanbhai were not returned to him while taking possession of the said land. Plaintiff served notice to deceased Mohanbhai on 5th October, 1979 for recovery of the amount and thereafter in 1979 suit for the recovery of Rs. 8,165 along with interest was filed.

3. Defendants present appellants emerged with the defence that even prima facie the case was barred by period of limitation and that the money advanced by the plaintiff had already been paid to the plaintiff by defendants. In evidence, a transaction was also sought to be placed on record by the defendants that he had borrowed Rs. 8,000/- by "Vayada Chitthi", Exh.20, and the amount was to the tune of Rs. 8,000/-.

4. Learned Trial Judge came to the conclusion that from the evidence on record it appears that upto 1979 the plaintiff was in possession of the land and thereafter possession of the land must have been taken by the defendants. The trial court also came to the conclusion

that the defendants failed to establish that the payment had already been effected as contended. Trial court also held that the dispute was governed by Article 113 of the Indian Limitation Act and not under Article 119 of the Indian Limitation Act as pleaded by the Defendants. Being aggrieved, the defendants filed a Civil Appeal No. 119 of 1981 before the District Court at Vadodara, and vide order and judgment dated 30th July, 1983, learned Third Extra Assistant Judge, Baroda, dismissed the Appeal and confirmed the decree passed by the Trial Court in favour of the plaintiff, As aforesaid, being aggrieved, the Second Appeal is filed.

5. Learned Advocate Mr. Trilok Patel on behalf of Mr.J.M.Patel was heard on behalf of the appellants. However, no one is present on behalf of the respondent.

6. While admitting the Appeal, following substantial questions of law were framed by this Court :

- (i) Whether in the facts and circumstances of the case both the lower courts ought to have held that Article 19 of the Limitation Act is applicable and the suit of the plaintiff is clearly time barred as it was filed in the year 1979 even though the amounts were borrowed on 20th March, 1973 and prior to that;
- (ii) Whether in the facts and circumstances of the case, both the lower courts erred in holding that Article 113 of the Limitation Act is applicable?
- (iii) Whether in the facts and circumstances of the case, both the lower courts have not properly interpreted the suit agreement Exh.19 and 'Vayada Chitthi' Exh. 20?

7. Main controversy in this Appeal is regarding Limitation. Learned Advocate Mr.Patel on behalf of the appellants emphasised that this was a simple case of advancing money and could only be governed by Article 119 of the Limitation Act. The last payment which was received by the defendants was on 28th of March, 1973 and from that date, the suit was required to be brought within three years, instead the suit was filed in 1979 which is apparently time barred. Both the courts belows,

according to Mr. Patel erred in law in coming to the conclusion that the dispute was governed by Article 113 of the Indian Limitation Act.

8. To resolve the substantial questions of law, which have arisen in this Appeal, some facts will have to be seen. As per the facts of the case, an agreement came to be executed between the parties and arrangement was made for advancing of money on one side and entrusting of agricultural land on the other side. It is to be borne in mind that no covenant whatsoever for the interest on the amount advanced to the defendants has been included in the agreement. On the contrary, a categorical and special covenant found place in the agreement that the money i.e. Rs.7000 and whatever amount borrowed thereafter was to be repaid to the plaintiff as and when plaintiff restored possession of the land in question to defendants. No time or exact date or probable period is fixed in the agreement for this eventuality. Evidence goes to show that somewhere in 1979 the possession of the land was taken away by the defendants. Of course, this is the conclusion of courts below from the evidence, and cannot be reopened at this stage. Therefore, so far as the arguments on facts to decide the question of law is concerned, the facts, as have been held proved by both the courts below will have to be taken into consideration and therefore it is to be held that somewhere in 1979 the possession of the land in question was restored to the defendants. Coupled with this, again if we take into

consideration the finding of facts by both the courts below regarding repayment, both the courts below found that defendants could not prove whether the amount was repaid. In this background and the circumstances, the time for limitation would run against the plaintiff only in 1979 and not from the date of the last amount i.e. on 28th March, 1973 received by the defendants.

9. Now, this is not a case of simple advancing of money, that is clear from the covenant, agreed by the parties to the agreement executed on 2.6.1969. Advancing of money and entrustment of agricultural land simultaneously goes to suggest that in lieu of advance, plaintiff was to enjoy crops of the agricultural land. The glaring fact which emerges is no time is fixed by the parties when the possession was required to be restored by the plaintiff to the defendants. The money advanced by the plaintiff therefore could be said to be due only when he restores possession to the defendants, for which no time is fixed in the agreement. This eventuality

happened only in 1979 and money becomes due and payable only in 1979. Therefore, both the courts below rightly held that the dispute is governed under Article 113 of the Limitation Act and not under Article 119 of the Limitation Act. The decision of both the courts below in respect to this law point requires no interference. Both the courts did not commit error of law in interpreting Exh. 19 Agreement and Exh-20 Vayada Chitthi.

10. In this view of the matter, there is no substance in the Second Appeal and the same is dismissed with no order as to costs.

(J.R. Vora, J.)

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